

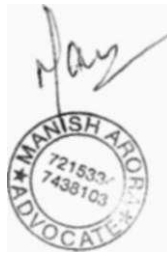
ARBITRATION AWARD

New Delhi Television Limited
 207, Okhla Industrial Estate
 Phase-III
 New Delhi – 110020
 Phone : 011-26446666
 Fax : 011-41735110
 e-mail : rajiv@ndtv.com

(Complainant)

Canadian Niagara Hotels
 4438, Kalar rd
 Niagara Falls
 On 12h 1s8
 CA
 Phone : +1-9053570982
 Fax : 1-9053570982

(Respondent)





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**In Domain Name Registry
C/o National Internet Exchange in India**

Award by Manish Arora, Advocate (Sole Arbitrator)

The Parties

A. Complainant

The Complainant in these administrative proceedings is New Delhi Television Limited, a Public Limited Company incorporated under the Companies Act, 1956, India and is engaged in the business of operating news channels, production of news programmes and sourcing and supplying of television programmes. The Complainant is the registered owner of the Trademark NDTV and various other marks as its constituents. The domain name www.ndtv.com is registered in the name of a group company of the Complainant. The website www.ndtv.com is the website used by Indians worldwide to access the news and other India specific informations. The website is used and visited by internet users from U.S.A., Australia and U.K. The Complainant has various corporate entities in India and worldwide using 'NDTV' as part of their corporate name viz.

- NDTV Imagine Limited (India)
- NDTV Lifestyle Limited (India)
- NDTV Labs Limited (India)
- NDTV Convergence Limited (India)
- NDTV Networks PLC (UK)
- NDTV Networks BV (The Netherlands)
- NDTV Global BV (Emerging Markets 24 x 7) (The Netherlands)

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The Complainant New Delhi Television Limited contact details are as follows:

207, Okhla Industrial Estate
Phase III, New Delhi - 110020
India
Phone : 011-26446666
Fax : 011-41735110
E-mail : rajiv@ndtv.com

The Complainant's authorised representative in this administrative proceeding is

Mr. Rajiv Mathur
Company Secretary
Address :
New Delhi Television Limited
207, Okhla Industrial Estate
Phase III, New Delhi - 110020
India
Phone : 011-26446666
Fax : 011-41735110
E-mail : rajiv@ndtv.com

B. The Respondent

According to the IN Domain name Registry, the name of the Respondent is shown as Canadian Niagara Hotels.

The Respondent's contact details are as follows:

4438, Kalar Road
Niagara Falls
Ontario L2S
CA

Administrative and Technical contact

Steve Alek
Canadian Niagara Hotels
4438, Kalar Road
Niagara Falls
Ontario L2S
CA
Phone : +1-9053570982
Fax : 1-9053570982
E-mail : sales@canadianiagarahotels.com



Domain name

The dispute concerns the domain name:

www.ndtv.co.in

The Complainant's contention

The Complainant is the registered owner of the Trademark NDTV and uses the domain name www.ndtv.com. The website www.ndtv.com is a leading website, used and visited worldwide. The Complainant has various corporate entities in India and the world that use "NDTV" as a part of their corporate name. The Complainant contends that the domain name www.ndtv.co.in is confusingly similar to its domain name www.ndtv.com.

The Complainant asserts that the respondent Canadian Niagara Hotels, has no connection with the name NDTV and is a cyber squatter with respect to the domain name www.ndtv.co.in and the Respondent has got registration of such domain name in order to use for the commercial gains with the help of corporate name of NDTV and its website www.ndtv.com which is popular website of Complainant.

The Complainant further asserts that the Respondent uses, the domain name only to mislead and redirect the visitors of website which is http://www.canndianniagarahotels.com with a malafide intention. The respondent uses the traffic generated by the Complainant for its website www.ndtv.com by confusing the users and also by tapping any traffic getting diverted due to errors made by the users in typing the domain while accessing the site. The Complainant further alleges that this is a case of cyber squatting and typo squatting for which it has all the rights. The complainant further asserts that the domain www.ndtv.co.in is a corporate domain for which all the rights vest in the New Delhi Television Limited and the respondent has no connection whatsoever with the name NDTV and the domain www.ndtv.co.in has been registered by the respondent to derive undue advantage out of the respectable name of the Complainant and the domain name www.ndtv.co.in was registered and is used by the respondent in bad faith and in domain www.ndtv.co.in, "in" denotes a geographical extension, which has been reserved for Indian or India specific websites, either of which is not the case with the website of the respondent. The Respondent is an organisation based in Canada and is in the business of Hotels there and has no connection either with NDTV or with India.

The Respondents Contention

The Respondent Canadian Niagara Hotels contends that it had purchased the domain www.ndtv.co.in two years back and such domain has only been used as a Niagara District Travel Venue which abbreviates 'NDTV' hence the acronym NDTV. In Canada "co.in" is used also as an acronym for "COIN" to save people money when looking to reserve a hotel in Niagara.

The Respondent also contends that there is no trademark from NDTV covering Niagara District Travel Venues and this domain is used only in

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Canada since it purchased two years ago. It has never been offered for sale and never been parked at any PPC site and it has also never made any reference to NDTV which is an acronym in itself for New Delhi Television Limited.

The Respondent further asserted that such domain is a simple acronym which (NDTV) New Delhi Television Limited has registered prior to purchase of disputed domain by it and it may have warranted the domain at that time. The respondent further contends that just because a company has a trademark that does not constitute ownership of all acronyms that company choose to own. And it had worked extremely hard to promote Nigara District Travel Venue website and until these e-mail have never been heard of New Delhi Television Limited.

The Respondent further asserted that New Delhi Television Limited is trying to reverse domain hijack this domain and any internet user looking for ndtv.com would use .com and thus eliminate any claims by NDTV that its domain may be confusing to users and the claims by NDTV are not sustainable nor warranted and this reverse domain hijacking should be dismissed and fined if the arbitrator can see that its web domain does not in any way compete or mislead from NDTV. The Respondent further asserts that it attracts users from Canada and the USA which is not the market of New Delhi Television Limited and claims that the claim of New Delhi Television Limited be dismissed.

DECISION

The Complainant, New Delhi Television Limited while referring the complaint, submitted to arbitration in accordance with IN Dispute Resolution Policy and the Rules framed Hereunder. The Respondent also submitted to the arbitration proceedings.

The Complainant is a company incorporated with the name New Delhi Television Limited under the Companies Act, 1956, India. The Complainant is also the Registered owner of domain name www.ndtv.com and has acquired certificate of Registration of Trademark since 17 April, 2003. The Respondent in its response to the complaint dated 10 April, 2007 has not made any dispute regarding incorporation of Complainant.

The averments made in the complaint and the evidence produced on record by the complainant sufficiently establish the prior adoption and registration if the domain www.ndtv.com. The Respondent has purchased NDTV.co.in since two years back from date of submission to arbitration proceeding that fall in 2005.

The copies of registration of trademark, certificate of incorporation, print outs of the complainant's websites which have been placed by the complaint are not disputed by the Respondent.

The Complainant has thus discharged its onus in establishing its proprietary rights in the domain www.ndtv.com on account of adoption, use and registration. The Complainant has also succeeded in establishing his right to me domain name consisting of the mark www.ndtv.com on account of its use and registrations.



The Complainant alleged that the domain name of respondent is deceptively similar to the complainant and the respondent has no connection with the name NDTV and is a cyber squatter with respect to the domain www.ndtv.co.in and such domain is used for commercial gains by exploiting the corporate name and website of Complainant and it is the malafide intention of the Respondent for confuse the users and by tapping any traffic getting diverted to the users, while accessing the website and also the Respondent has no legitimate interest in respect of the domain name of the Complainant and the domain name of the Respondent was registered and is being used in bad faith.

The Respondent asserted that the domain NDTV.co.in was purchased two year ago and the same was used as a Niagara District Travel Venue hence the acronym NDTV in Canada 'co.in' is used as an acronym for "COIN" to save people money when looking to reserve a hotel in Niagara and the Complainant's accusation as cyber-squatter is scandalous and damaging. The Respondent also asserts that the Complainant is trying to reverse the domain hijack this domain and the claims of complainant are not sustainable and not warranted.

The onus of proof is on the Complainant and the standard of proof is on the balance of probabilities. The material facts pleaded in the complaint concerning the Complainant's legitimate right, interest and title in the domain and the reputation accrued thereto have neither been dealt with nor disputed or specifically denied by the respondent. The respondent has also not denied the correctness or genuineness of any of the Annexure to the complaint.

It is held that:

- Both the element of bad faith registration and bad faith use are not established. The Respondent deals with other marketing area rather than that of Complainant.
- The Respondent has no relationship or connection with the business of New Delhi Television Limited.
- Though the Respondent has no malafide intention to deceive the internet users of Complainant, the misrepresentation is made in the course of trade to unwary Internet users.
- There is no evidence that the Respondent has purchased the domain on account of bad faith.
- By relying on judgement of Supreme Court of India in *Satyam Infoway Ltd. vs. Sifynet Solutions Pvt. Ltd.* reported in AIR 2004 SC 3540 and in accordance with the paragraph 10 of the IN Domain Name Dispute Resolution Policy the domain name www.ndtv.co.in of Respondent be surrendered to the Complainant.

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dated : 2nd January, 2008